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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION**

SEQUOIA FORESTKEEPER, <i>et al.</i> ,)	Case No. 1:21-cv-01041-DAD-BAM
)	
)	
Plaintiffs,)	JOINT RESPONSE REGARDING THE
)	COURT’S JULY 23, 2021 ORDER
v.)	[ECF No. 19]
)	
UNITED STATES FOREST SERVICE,)	
)	
Defendant.)	
_____)	

The parties hereby submit this joint response in accordance with the Court’s July 23, 2021 Order, ECF No. 19, directing the parties to “meet and confer as to whether any further evidence or briefing need be presented or whether the court may adopt this order in ruling on the pending motion for preliminary injunction.”

Defendant requests leave to file a short memorandum of no more than five pages to address two issues raised for the first time in the Court’s July 23 Opinion and to briefly expand on one issue presented by the Court’s ordered relief. Specifically, Defendant intends to address whether the agency may, as a matter of law, distinguish *Environmental Protection Information Center v. Carlson*, 968 F.3d 985 (9th Cir. 2020), by supplying more information in support of the agency’s decision and whether the agency has done so in this case. Defendant also intends to request—and provide justification for—a modest modification to the Court’s Temporary Restraining Order, or to any Preliminary Injunction, to allow the Forest Service to cut and remove what it anticipates to be a small number of incidental trees that pose a hazard to the contractor while felling and removing hazard trees in compliance with the Court’s Order.

Defendant proposes to file its five-page memorandum on August 6, 2021. Defendant also proposes that if Plaintiffs intend to file a reply, they do so by August 13, 2021, and that their reply also be limited to five pages.

1 Plaintiffs do not believe that the issues referred to by Defendant are new issues raised for
 2 the first time in the Court's July 23 Opinion, and do not believe that additional briefing on those
 3 issues is warranted. As such, Plaintiffs ask the Court to adopt its temporary restraining order in
 4 ruling on the pending motion for preliminary injunction. Defendant has already provided a
 5 lengthy argument on the very issues it now seeks reargue.¹ See D's Opp Br. at 16-19 (ECF No.
 6 16). And the Court summarily rejected Defendant's assertions and arguments both during oral
 7 argument and in the Court's opinion finding that Defendant's argument "simply appears to
 8 embrace the dissenting opinion in *EPIC*, which obviously does not control" and was just
 9 "supplying more information in support of arguments that were explicitly rejected [in *EPIC*]."
 10 TRO Opinion at 10. However, should the Court think that more briefing is appropriate, Plaintiffs
 11 are amenable to Defendant's suggested schedule.

12 Regarding modifying the injunction, Plaintiffs are not sure what Defendant's requested
 13 modification would allow. Plaintiffs requested any non-privileged documents regarding
 14 implementation of the Court's injunction, such as instructions to the operator or documents
 15 originating from the operator, or agency memoranda (excluding privileged legal or policy
 16 deliberations). Defendant's counsel represented that they will confer with the agency next week
 17 when essential personnel return from leave and determine whether the Forest Service is willing
 18 to provide any documents in response to Plaintiffs' request. If after reviewing any documents
 19 provided by Defendant in support of its proposed modification, or in response to Plaintiffs'
 20 request more generally, the parties remain at an impasse regarding Plaintiffs' document requests,
 21 Plaintiffs may file a motion seeking an order directing the Forest Service to provide Plaintiffs
 22 with additional documents.

23 Respectfully submitted on this 30th day of July, 2021.

24 /s/ Matt Kenna (with permission)

25 René Voss

26 Matt Kenna, *Pro Hac Vice*

27 *Attorneys for Plaintiffs*

28 ¹ Moreover, any further arguments on these issues are more appropriate for cross-motions of summary judgment with a fully-developed administrative record.

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